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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,)	CR-09-0089-RHW
9 Plaintiff,)	
10 v.)	Notice of Review of
11 TIMOTHY SHELLEY,)	Presentence Investigation
12 Defendant.)	Report

13
14 Plaintiff United States of America, by and through James A. McDevitt,
15 United States Attorney for the Eastern District of Washington, and Stephanie J.
16 Lister, Assistant United States Attorney for the Eastern District of Washington,
17 submits the following Notice of Review of the Presentence Investigation Report
18 (hereinafter PSR) prepared by United States Probation Officer, Gloria M. Petretee,
19 dated May 26, 2010.

20 **INTRODUCTION**

21 Pursuant to a Fed. R. Crim.P. 11(c)(1)(C) Plea Agreement, the Defendant,
22 Timothy Shelly, plead guilty to Count One and Count Three of the Indictment in
23 CR-09-0089-RHW. Count One charged him with Coercion of a Minor, in
24 violation of 18 U.S.C. § 2422(b). Count Three charged him with Travel with
25 Intent to Have Sex with a Minor, in violation of 18 U.S.C. § 2423(b). Sentencing
26 has been continued until September 23, 2010.

1 The United States has reviewed the Presentence Investigation Report and
2 has determined, based upon information that is presently available, that the
3 Presentence Report is factually complete and accurate.

4 **A. The Sentencing Guideline Calculations and Statutory Provisions.**

5 The U.S. Probation Office has determined Defendant's base offense level,
6 for coercion of a minor and travel with intent to have sex with a minor, pursuant
7 to the United States Sentencing Guidelines (U.S.S.G.) § 2G1.3(a)(4), to be 24.
8 PSR ¶ 33. The U.S. Probation Office has determined that the facts of the case
9 warrant a number of specific characteristic reductions and/or enhancements:

- 10 ● The offense involved the knowing misrepresentation of a
11 participant's identity to entice a minor to engage in
12 prohibited sexual conduct. U.S.S.G. § 2G1.3(b)(2).
13 PSR ¶ 34; (+2);
- 14 ● A computer was used to entice a minor to engage in
15 prohibited sexual conduct. U.S.S.G. § 2G1.3(b)(3).
16 PSR ¶ 35; and (+2);
- 17 ● The offense involved commission of a sex act.
18 U.S.S.G. § 2G1.3(b)(4)(A). PSR ¶ 36; (+2).

19 The Government concurs with the calculations included in the PSR that
20 Defendant's adjusted offense level is 30. PSR ¶ 40.

21 The United States also concurs with the PSR that a downward adjustment
22 for acceptance of responsibility is appropriate. Thus, with a reduction for
23 acceptance of responsibility, Defendant's total offense level is 27. PSR ¶ 45.

24 Defendant does not have any criminal history points, establishing a
25 criminal history category of I. PSR ¶ 50. Based on a *total offense level of 27 and*
26 *a criminal history category of I, defendant's advisory U.S.S.G. range is 70-87*
27 *months in prison.* PSR ¶ 100. Pursuant to the Plea Agreement the parties have
28 agreed that "[t]here are aggravating factors with respect to the correct calculation

1 of the Sentencing Guidelines. The Government and Defendant agree that both the
2 Government and Defendant, TIMOTHY A. SHELLY, will seek an upward
3 departure of 5 levels from the applicable Guidelines, resulting in an *adjusted*
4 *offense level of 32 and a sentencing guideline range of 121-151 months.*” (Plea
5 Agreement pg.9, ¶ 8-Departures, italics added).

6 Furthermore, the parties agreed in the Plea Agreement “[p]ursuant to Fed. R.
7 Crim. P. 11(c)(1)(C), the Defendant, TIMOTHY A. SHELLY, and the United
8 States agree that the Defendant be sentenced to a term of imprisonment of 12
9 years.” (Plea Agreement pg.9, ¶ 9 Incarceration) and PSR ¶ 98. In exchange for
10 the Defendant’s agreement to a sentence of 12 years, the United States has agreed
11 in the Plea Agreement to move at sentencing to dismiss Count 2 of the Indictment,
12 which charges the Defendant with Production of Child Pornography, in violation
13 of 18 U.S.C. § 2251(a). (Plea Agreement pg.7, ¶ 6-Dismiss). A guilty plea or
14 conviction for Production of Child Pornography statutorily requires a mandatory
15 minimum sentence of not less than 15 years. The sentencing guideline range for
16 Production of Child Pornography, with a total adjusted offense level of 33 and a
17 criminal history of I, is 135-168 months (according to U.S.S.G. § 2G2.2 the base
18 offense for production is 32, +2 because the minor was under sixteen, +2 for
19 solicitation, -3 for acceptance of responsibility). Thus, an agreed sentence of 12
20 years and dismissal of the charge of Production of Child Pornography which
21 requires a mandatory minimum 15 year sentence, is a favorable sentencing plea
22 agreement to the Defendant.

23 As to supervised release, a period of not less than five (5) years nor more
24 than a life term of supervised release is required for both charges, pursuant to 18
25 U.S.C. § 3583(b). Terms of supervised release run concurrently. PSR ¶ 88. The
26 parties have not agreed to a term of supervised release and this will need to be
27 resolved by the Court at sentencing. (Plea Agreement, pg. 10 ¶ 11).

1 **B. Fines, Special Penalty Assessment, Restitution and Forfeiture.**

2 The United States will not present any information on the Defendant's
3 ability to pay a fine.

4 A total special penalty assessment of \$200 is required. PSR ¶ 95-96.

5 Restitution is not an issue. At the time of the Plea Agreement the victim in
6 this case indicated she does not seek restitution. (Plea Agreement, pg. 11 ¶ 12).

7 Pursuant to the Plea Agreement, the Defendant has agreed to forfeiture of
8 the Computer hard drive, serial number WMA9P1666869 used to commit the
9 charged offenses. (Plea Agreement, pg. 12 ¶ 15) and PSR ¶ 99.

10 DATED June 8, 2010.

11
12 James A. McDevitt
13 United States Attorney

14 s/Stephanie J. Lister

15 Stephanie J. Lister
16 Assistant United States Attorney
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1 I hereby certify that on June 8, 2010, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/ECF System which will send
3 notification of such filing to the following, and/or I hereby certify that I have
4 mailed by United States Postal Service the document to the following non-
5 CM/ECF participant(s):

6 Amy Rubin
7 Federal Defenders of Eastern WA/ID
8 10 North Post Street, Suite 700
9 Spokane, WA 99201

10 Gloria M. Petretee
11 United States Probation Officer
12 U.S. Probation
13 920 West Riverside, Room 540
14 Spokane, WA 99201

15 s/Stephanie J. Lister

16 Stephanie J. Lister
17 Assistant United States Attorney
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